

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION**

Travis Wright,)	
)	
Petitioner,)	C.A. No.: 2:11-cr-472-PMD-4
)	
v.)	
)	<u>ORDER</u>
United States of America,)	
)	
Respondent.)	
_____)	

This matter is before the Court on Petitioner Travis Wright’s motion to withdraw his motion for relief under 28 U.S.C. § 2255 (ECF No. 2212). Acting *pro se*, Petitioner filed his § 2255 motion seeking relief under *Johnson v. United States*, 135 S. Ct. 2551 (2015). Now having the benefit of counsel, Petitioner states he filed his § 2255 without knowing if *Johnson* affords him relief and without knowing the procedural consequences of filing a § 2255 motion.

Because the Government has moved for summary judgment, the Court construes the request as a motion for an order of voluntary dismissal pursuant to Federal Rule of Civil Procedure 41(a)(2). See Fed. R. Civ. P. 41(a) (allowing plaintiffs to dismiss cases without a court order only in limited circumstances that are not present here). Rule 41(a)(2) allows courts to order voluntary dismissal “on terms that the court considers proper.” “A plaintiff’s motion under Rule 41(a)(2) should not be denied absent substantial prejudice to the defendant.” *Andes v. Versant Corp.*, 788 F.2d 1033, 1036 (4th Cir. 1986). Seeing no such prejudice here, the Court will dismiss the § 2255 motion.


The Court will dismiss Petitioner’s current § 2255 motion without prejudice. It does so based solely on the lack of any apparent reason that such a dismissal will prejudice the Government. As such, this Order should not be interpreted as a predetermination of whether any

future § 2255 motion Petitioner might file would be second or successive. *See Provenzale v. United States*, 388 F. App'x 285, 287 (4th Cir. 2010) (per curiam); *Thai v. United States*, 391 F.3d 491, 495 (2d Cir. 2004) (per curiam). The Court expresses no opinion on that issue at this time.

CONCLUSION

For the foregoing reasons, Petitioner's motion to withdraw his § 2255 motion is **GRANTED**. Petitioner's § 2255 motion is **DISMISSED** without prejudice, and therefore the Government's summary judgment motion is **MOOT**.

AND IT IS SO ORDERED.



PATRICK MICHAEL DUFFY
United States District Judge

July 18, 2016
Charleston, South Carolina